CHEVRON, U.S.A., INC.

IBLA 82-1019 Decided September 27, 1982

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting in part acquired lands oil and gas lease offer ES 19392.

Affirmed.

1. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Description of Land -- Regulations: Interpretation

It is proper to reject an oil and gas lease submitted for less than an entire tract of acquired land, not surveyed under the rectangular system of public land surveys, where the boundary of the tract is not described by course and distance between the successive angle points of the boundary of the tract. Where there is an exclusion of an area within the boundary of the tract, the exclusion must likewise be described by course and distance between its angle points.

APPEARANCES: Jason R. Warran, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Chevron, U.S.A., Inc. (Chevron), appeals the May 14, 1982, decision of the Eastern States Office, Bureau of Land Management (BLM), which sustained a protest by Leon F. Scully, Jr. (Scully), against acquired lands oil and gas lease offer ES 19392 of Chevron and rejected offer ES 19392 in part.

Chevron's offer ES 19392 was filed June 26, 1978, for a portion of tract L-14, containing 2,435.4 acres more or less, described by metes and bounds, within the George Washington National Forest, Allegheny County, Virginia, and for all of tract J-685 II, contiguous to tract L-14. The portion of tract L-14 described by metes and bounds contains 2,660.1 gross acres, but the offer was for all the described land except "Exception No. 1" containing 224.7 acres, and all tract J-686 II of 11.5 acres.

Subsequently, on June 23, 1980, Scully filed acquired lands oil and gas lease offer ES 25052 for the 2,435.4 acres availabe in tract L-14, and at the same time, filed a protest against the Chevron offer, alleging that Chevron did not describe the land as required by 43 CFR 3101.2-3(b)(1). Specifically, Scully asserted that Chevron had included the land in Exception No. 1 in the metes and bounds description, instead of excluding that area, which he, Scully, did in his offer ES 25052. Consequently, he claimed priority over the alleged invalid Chevron offer for the land in tract L-14.

In its decision, BLM agreed with Scully that the Chevron metes and bounds description did not comply with 43 CFR 3101.2-3(b)(1), and rejected offer ES 19392 as to parcel 1, i.e., tract L-14.

The regulation, 43 CFR 3101.2-3, provides pertinently as follows:

§ 3101.2-3 Description of lands in offer.

* * * * * * *

(b)(1) Lands not surveyed under the rectangular survey system. If the lands have not been surveyed under the rectangular system of public land surveys, and the tract is not within the area of the public land surveys, it must be described as in the deed or other document by which the United States acquired title to the lands or minerals. If the desired land constitutes less than the entire tract acquired by the United States, it must be described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land. In addition, if the description in the deed or other document by which the United States acquired title to the lands does not include the courses and distances between the successive angle points on the boundary of the desired tract, the description in the offer must be expanded to include such courses and distances.

(2) Each offer or application must be accompanied by a map upon which the desired lands are clearly marked showing their location with respect to the administrative unit or project of which they are a part * * *.

(3) If an acquisition tract number has been assigned by the acquiring agency to the identical tract desired, a description by such tract number will be accepted. Such offer or application must be accompanied by the map required by paragraph (b)(2) of this section.

Appellant states the only material difference in the metes and bounds description in the offers is that the Chevron description proceeded down the eastern side of tract L-14 and Exception No. 1, but thereafter stating Exception No. 1 was to be excepted from the area described and applied for, whereas the Scully description proceeded down the western side of Exception

No. 1. Appellant argues that Exception No. 1 was excepted from the Decree of Condemnation in United States v. 39,668.60 acres of Land, No. 1108 (W.D. Va. Feb. 24, 1938), and was designated in the Decree of Condemnation as "Exception No. 1." Appellant contends that the regulation does not require the description of excepted areas in detail when the description in the offer identifies the excepted area by reference to the document of acquisition, and leaves no doubt as to which lands are included and excluded in the offer. Appellant suggests even if a contrary interpretation of the regulations was also reasonable, the regulation is sufficiently unclear that an offer describing the boundary of the tract fully by courses and distances, and identifying an excepted area in accordance with the document of acquisition by the United States, must be accepted. Appellant refers to earlier cases in which this Board has criticized 43 CFR 3101.2-3 as suffering a "dearth of clarity," Walter W. Wilson, Jr., 55 IBLA 96, 104 (1981); "something less than crystal clear," Murphy Oil Corp., 13 IBLA 160, 164 (1973); and "less than a paradigm of clarity," Arthur E. Meinhart, 5 IBLA 345, 349 (1972). Appellant argues that Scully did not contend the Chevron offer created any doubt as to the area covered thereby, but rather that the offer did not comply with a technical requirement of the regulation. But Chevron contends that to read the regulation is such fashion as to find it in noncompliance would be to do no less than separate the regulation from the purpose for its existence. Appellant contends its offer complied fully with both the spirit and the letter of the regulation. Appellant cites Walter W. Wilson, Jr., supra, to the effect that regulations should be so clear that there is no basis for an oil and gas lease applicant's noncompliance with them before they are interpreted so as to deprive him of a statutory preference right to a lease.

The cited regulation requires that if less than an entire tract of acquired land, not surveyed under the rectangular system of public lands surveys, is included in an oil and gas lease offer, the tract must be described by course and distance between the successive angle points of the boundary of the tract sought. Inasmuch as the excepted land, Exception No. 1, adjoins the boundary of tract L-14, the proper description under the cited regulation is one that sets apart the excluded area by showing the course and distance between its successive angle points, starting from a point on the boundary of the tract sought. On this point, the regulation is abundantly clear. As the Chevron offer did not comply with the regulation by referring only to the excluded area as "Exception No. 1," and not by a description giving course and distance between the successive angle points, the offer did not comply with the regulations and consequently it had to be rejected to that extent. The fact that no one was misled as to the area sought is not material to the issue before the Board on appeal.

Walter W. Wilson, Jr., supra, cited by appellant is not apposite as in that case the parcels sought to be leased were precisely delineated on the map which accompanied the offer, whereas in this case appellant is seeking only a portion of tract L-14, and the map accompanying the offer does not show any legible courses or distances between the angle points on the boundary of the tract sought. Appellant's reference to Murphy Oil Corp., supra, and Arthur E. Meinhart, supra, similarly are not pertinent as the lack of clarity in the regulation expressed by the Board referred, respectively, to the question of when the regulation requires an application to be accompanied by a

map, instead of a description by course and distance, and to when an acquisition tract number could be used in accordance with subsection (b)(3).

We cannot agree with appellant that there is a lack of clarity in the regulation as it defines the required description when only a portion of an acquired tract of land not surveyed under the rectangular system of public land surveys is sought. The protest against the acceptability of the Chevron offer was properly sustained by BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Douglas E. Henriques
Administrative Judge

We concur:

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Will A. Irwin
Administrative Judge

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Jerry Muskrat
Administrative Judge
Alternate Member